

Claimant contends the Appeals Board (Board) does not have jurisdiction to consider these issues above listed. Claimant argues that whether an employment relationship existed between claimant and respondent is not an issue within the Board's jurisdiction under K.S.A. 44-534a or under K.S.A. 2002 Supp. 44-551. Claimant also argues that as respondent did not specifically allege the Administrative Law Judge exceeded her jurisdiction regarding the Order, the Board cannot consider any of the issues listed under K.S.A. 44-534a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds that the Order of the Administrative Law Judge should be affirmed.

The Board will first address claimant's issues regarding its jurisdiction to consider this matter.

Claimant is correct that the Board can only review issues where it is alleged that an administrative law judge exceeded his or her jurisdiction is granting or denying the benefits requested.¹ However, this includes a review of the preliminary hearing issues listed in K.S.A. 44-534a, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether other certain defenses apply. The Board has never read K.S.A. 2002 Supp. 44-551 in so narrow a fashion as that requested by claimant and does not elect to do so in this instance.

K.S.A. 44-534a, in discussing the disputed issues above listed, concludes they "shall be considered jurisdictional, and subject to review by the board." This language appears to mandate that the above four issues be considered on appeal from a preliminary hearing without the limitations argued by claimant.

With regard to whether an employer-employee relationship can be considered as an issue under K.S.A. 44-534a, the Board notes that "certain other defenses", as listed in K.S.A. 44-534a, refers to defenses subject to review by the Board only if they dispute the compensability of the injury under the Workers Compensation Act.² The issue as to whether an employer-employee relationship exists clearly involves a determination regarding the compensability of the claim and would come under the heading of "certain other defenses." Therefore, the Board will consider both whether the employer-employee relationship existed and whether claimant suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged.

Preliminary hearing orders have traditionally been brief statements of the administrative law judge's findings, with little or no discussion regarding findings of fact and conclusions of law. Preliminary hearing orders generally average one to two pages in length. In this instance, the Administrative Law Judge provided a six-page, single spaced preliminary hearing Order, which not only discussed the facts, but reached conclusions on a more detailed level than normally anticipated from a preliminary hearing.

¹ K.S.A. 2002 Supp. 44-551.

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

The Board finds that the Order sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

The disputes in this appeal are numerous. Respondent alleges claimant was not employed by respondent, claimant was performing work which respondent was not contracted to perform, claimant was using equipment which was not respondent's and claimant's activities were done without the supervision and/or permission of respondent. Claimant contests all of these issues, providing testimony from several sources which indicates that respondent and respondent's wife did, indeed, hire claimant, provide the materials and tools to perform the job and supervised the work being performed. The testimony in this instance was both convoluted and, at times, diametrical.

As was noted by the Administrative Law Judge in the Order, it is no surprise that someone here is not telling the truth. Therefore, credibility becomes of significant importance when the testimony is so much in conflict. The Administrative Law Judge, in this instance, had the opportunity to observe claimant and respondent's representatives at the preliminary hearing. It is acknowledged there were several other depositions of witnesses taken in this matter, but the key dispute appears to be between respondents (Ms. Maria and Mr. Martin) and claimant. The Administrative Law Judge, in awarding claimant benefits, apparently concluded that claimant's testimony was more credible, while at the same time recognizing that claimant's testimony had problems. The Board, in reviewing the evidence, finds that in this instance some deference should be given to the Administrative Law Judge's ability to assess the credibility of the witnesses. In doing so, the Board finds that the determination by the Administrative Law Judge that claimant was an employee of respondent on the date of accident is supported by a preponderance of the credible evidence and is affirmed. The Board, therefore, finds that claimant's activities, caulking on a ladder, which resulted in the fall and ultimate injuries to claimant, occurred while in that employment and, therefore, are compensable under the Kansas Workers Compensation Act.

The Board, therefore, finds that the Order of the Administrative Law Judge granting claimant benefits in the form of medical treatment and temporary total disability compensation should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A.N. Sample dated July 10, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant
Matthew J. Stretz, Attorney for Respondent
Kenneth Hursh, Administrative Law Judge
Paula S. Greathouse, Director